IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

**O R D E R**

Rati Ram Vs. State of Rajasthan & Ors.
**S.B. CR. REVISION PETITION NO.950/2004**

Against order dated 11.12.2004 passed by Sessions Judge, Sri Ganganagar in Criminal Revision Petition No.217/2004 (Ramkumar & Anr. Vs. Moti Ram & Ors).

DATE OF ORDER :: 12th December, 2006.

**PRESENT**

**HON'BLE MR.JUSTICE SATYA PRAKASH PATHAK**

Mr. H.S. Sandhu for petitioner.
Mr. S.L. Jain for respondents No.2 & 3.

**BY THE COURT**:

By this petition, challenge has been made to the order dated 11.12.2004 passed by Sessions Judge, Sri Ganganagar in Criminal Revision Petition No.217/2004 (Ramkumar & Anr. Vs. Moti Ram & Ors.) whereby the learned revisional Court set aside the order dated 25.10.2004 of SDM, Sri Ganganagar and while ordering restoration of possession within 7 days, remanded the matter back to the SDM.

The case of the petitioners is that their father Moti Ram entered into an agreement with Ashu Ram for purchase of land measuring 15 bighas for a consideration of Rs.75,000/- and the amount was paid to him, however, the sale deed was not executed and then a notice was given to which the reply dated 30.07.1998 was filed by the respondents admitting possession of the purchaser. It is alleged that, in such circumstances, the father of the petitioners had to file a suit for specific performance on 12.08.1998 wherein order of status quo regarding possession was passed on 07.12.1998. It is said that later on the suit was dismissed but in the judgment trial court gave finding to the effect that plaintiff proved making payment of Rs.75,000 on 08.02.1986 and possession was handed over to him and on the basis of that finding decided Issue No.1 & 2 in favour of him. The appeal against that order, bearing S.B. Civil 1st Appeal No. 202/2000 is pending before this Court. The further case of the petitioners is that meanwhile proceedings under Sec.145 Cr.P.C. were initiated and after obtaining stay order on 07.12.1998 the respondents forcibly took possession of the disputed land on 29.04.1999 against

which petitioners' father lodged an FIR at Police Station Sadulsahar and the police challaned the respondents and other persons. The SDM, decided the case instituted on the proceedings under Sec.145 Cr.P.C. on 01.11.2000, against which revision petition filed was decided by ADJ No.2 on 31.07.2001 and he remanded the case back, which order was challenged by way of a revision petition bearing No.93/2001 and that revision was decided on 19.04.2004. Thereafter, the SDM decided proceedings under Sec.145 afresh on 25.10.2004 and came to the conclusion that on 01.05.1999 the possession was with Moti Ram and after his death on 13.07.2001 his sons came in possession of the land in dispute. The revision petition filed against that order dated 13.07.2001 by respondents Ramkumar and Banwarilal was allowed by the order impugned, hence the petitioners have filed the present revision petition.

In this case, the learned S.D.M., after remand of the case for deciding the proceedings under Sec.145 Cr.P.C. in pursuance to the order passed by the revisional Court of Sessions Judge No.2, Sri Ganganagar proceeded with the matter. Before him, on behalf of

Motiram and his sons Ratiram and Birbal, it was submitted that on 12.08.1999 a suit in respect of the land in dispute was pending in the Court and injunction was operating against Asharam, therefore, proceedings under Sec.145 Cr.P.C. could not be initiated. It was also submitted that on 01.05.1999 when the SHO, Sadul Sahar had submitted a complaint and the Court had passed initial order, the possession on the land was of Motiram as per the agreement dated 08.2.1986. The SDM, after hearing the other parties and also discussing the matter came to the conclusion that the sale agreement dated 08.02.1986 was executed after receipt of the consideration and the possession of the disputed land was handed over to Motiram and others and as Motiram and his son Maniram were in its possession, they are entitle to receive the possession thereof. The learned SDM ordered accordingly.

In revision before Sessions Judge against the order of SDM filed by present respondent No.2 & 3 Ramkumar and Bhanwarilal, the revisional Court found that the SDM passed the order without adhering to the conditions for declaring the right in respect of immoveable

properties and it was required of the court adjudicating the matter under Sec.145 Court to see as to who was in possession of the land in dispute immediately before two months of passing of the initial order and only thereafter considering this aspect of the matter the order declaring possession of the party should have been passed but the order was passed without doing so. The revisional Court further found that the court below had considered only the sale agreement dated 08.02.1986 and the receipts of Girdawari issued by the State Govt. for the years 1996 to 1998 but failed to consider the documents, pleadings and evidence whereas it was necessary for declaring possession under Sec.145, Cr.P.C. to see as to who was in possession of the property on the date of passing initial order because the Section provides that if any party had been dispossessed forcibly immediate before two months from filing of report before the Magistrate then under Sec.145(1) Cr.P.C., the possession on the property in dispute shall be deemed of the dispossessed. It was noticed by the Court that by the order of the lower Court dated 01.11.2000 the possession was declared of the revisionists against which opposite party filed revision No.11/2000 before the Addl.

Sessions Judge No.2, Sri Ganganagar and that Court by its order dated 31.07.2001 accepting the revision quashed the order dated 01.11.2000 declaring possession and remanded the matter but without adhering to the yardsticks and complying with the directions the lower Court passed the order. The revisional Court also noticed that by the order passed in S.B. Cr. Revision Petition No.93/2002 this Court passed order directing that the order be passed after hearing the parties and until the order is passed afresh, status quo be maintained whereas the possession was given. The Court, ultimately passed the order as aforesaid.

It has been submitted by learned counsel for the petitioner that the revisional Court failed to appreciate that before passing initial order the matter was already subjudice as a civil case was pending. It has also been submitted that when civil proceedings were pending, proceedings under Sec.145 Cr.P.C. were required to be terminated. It has further been submitted that the revisional Court has not properly appreciated the matter and the provisions of Sec.145 of the Cr.P.C. have not been considered in its correct perspective.

On the other hand, learned counsel for the respondent has submitted that the revisional Court has only remitted the matter to the trial Court to consider the matter in accordance with the provisions of Sec.145 of the Cr.P.C. because previously also when the matter was remitted, it was specifically directed that the Court was required to take into consideration relevant documents, pleadings and evidence of the parties and to see as to whether which party was in possession over the disputed land two months before the passing of the initial order under Sec.145 Cr.P.C. Submission of the learned counsel is that present revision petition is required to be dismissed.

I have considered the submissions made before me.

It is to be seen that the learned revisional Court has considered the matter categorically and while setting aside the order of the SDM 25.10.2004 and remanding the matter has specifically stated that possession over the disputed land was required to be taken into consideration in light of the provisions of Sec.145 of the Cr.P.C. but the learned trial Court did not take into consideration those

provisions and given a complete go bye to them as well as not considered the documents submitted by both sides and resultantly failed to appreciate the pleadings of the parties correctly. The submission of the learned counsel that civil case etc. pending in the matter were not taken into consideration by the revisional Court is of no substance because previously the matter was considered and remitted back but inspite of remand order trial Court did not appreciate the matter in the light of directions issued by the revisional Court and presently also the learned revisional Court has given reasons and specifically stated that the documents tendered before it were required to be gone into and for the purpose of determining possession under Sec. 145 of the Cr.P.C. the procedure is to be adopted as is stated in Sec.145 of the Cr.P.C., thus, a legal and valid order could be passed only after following due procedure by the trial Court and that aspect of the matter is completely missing in the matter as has been discussed by the revisional Court.

In view of above, I do not find a reason to take different view than the one taken by the learned

revisional Court, which in my opinion does not suffer from any illegality requiring interference by this Court in its revisional jurisdiction. No prejudice is going to be caused to either side if the matter after remand is considered as per the provisions of Sec.145 of the Cr.P.C.

In view of above discussions, I do not find any merit in this petition, which is liable to be dismissed after affirming the order dated 11.12.2004 passed by the revisional Court in Criminal Revision Petition No.217/04 (Ramkumar & Anr. Vs. Moti Ram & Ors.) and I order accordingly.

The revision petition stands dismissed as aforesaid.

(**SATYA PRAKASH PATHAK**)**J**.

/jpa